

COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Commerce and Consumer Affairs, to which was referred House Bill No. 1152, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete the amendment made on motion of Representative Goeglein
- 2 adopted February 10, 1999.
- 3 Page 1, line 4, delete "Protection" and insert "**Warranties**".
- 4 Page 1, delete lines 5 through 15, begin a new paragraph and insert:
- 5 "**Sec. 1. This chapter does not apply to assistive devices**
- 6 **purchased, leased, or transferred to a consumer before July 1,**
- 7 **1999.**
- 8 **Sec. 2. As used in this chapter, "assistive device" means any new**
- 9 **device, including a demonstrator, that a consumer purchases or**
- 10 **accepts transfer of in Indiana that is used for a major life activity.**
- 11 **The term includes the following devices:**
- 12 (1) **Manual wheelchairs, motorized wheelchairs, motorized**
- 13 **scooters, and other aids that enhance the mobility of an**
- 14 **individual.**
- 15 (2) **Hearing aids, telephone communication devices for the**
- 16 **deaf (TTD, TTY), assistive listening devices, visual and**
- 17 **audible signal systems, and other aids that enhance an**
- 18 **individual's ability to hear.**
- 19 (3) **Voice synthesized computer modules, optical scanners,**
- 20 **talking software, braille printers, and other devices that**

1 enhance a sight impaired individual's ability to communicate.

2 (4) Any other device that enables an individual with a
3 disability to communicate, see, hear, or maneuver.

4 The term does not include surgical implants, dental and ocular
5 prostheses, batteries, tires, or nonfunctional accessories.

6 Sec. 3. As used in this chapter, "collateral costs" means expenses
7 incurred by a consumer in connection with the repair of a
8 nonconformity, including the reasonable costs of obtaining an
9 alternative assistive device. The term does not include the cost of
10 an alternative assistive device.

11 Sec. 4. As used in this chapter, "consumer" means any of the
12 following:

13 (1) An individual who is a person with a disability as defined
14 in the federal Americans With Disabilities Act (42 U.S.C.
15 12101(2)) or the individual's legal representative:

16 (A) who has purchased an assistive device from an assistive
17 device dealer or manufacturer for purposes other than
18 resale;

19 (B) to whom the assistive device is transferred for purposes
20 other than resale, if the transfer occurs before the
21 expiration of any warranty established by this chapter; or

22 (C) who leases a new assistive device from an assistive
23 device lessor under a written lease.

24 (2) A person that purchases or leases an assistive device using
25 state or federal funds for the use of an individual with a
26 disability.

27 (3) An insurer or self-insurer that purchases or leases an
28 assistive device for the use of an individual with a disability.

29 Sec. 5. As used in this chapter, "dealer" means a person who is
30 in the business of selling or dispensing assistive devices.

31 Sec. 6. As used in this chapter, "demonstrator" means an
32 assistive device used primarily for the purpose of demonstration to
33 the public or loan to a consumer.

34 Sec. 7. As used in this chapter, "manufacturer" means a person
35 that manufactures or assembles assistive devices. The term
36 includes the agents of that person, an importer, a factory branch,
37 and any warrantors of the person's assistive device. The term does
38 not include a professional who fabricates, without charge, a device

1 for use in the course of treatment.

2 Sec. 8. (a) As used in this chapter, "nonconformity" means a
3 condition or defect that significantly impairs the use, value,
4 function, or safety of an assistive device or any of its components.

5 (b) The term does not include a condition or defect of the
6 assistive device that:

7 (1) is the result of:

8 (A) abuse, misuse, or neglect by a consumer;

9 (B) modifications or alterations not authorized by the
10 manufacturer;

11 (C) normal wear, including accumulation of ear wax,
12 perspiration, or moisture;

13 (D) normal use that may be resolved through a fitting
14 adjustment, routine maintenance, preventative
15 maintenance, or proper care; or

16 (E) a consumer's failure to follow any manufacturer's
17 written service and maintenance guidelines furnished at
18 the time of purchase; or

19 (2) indicates the need for:

20 (A) routine adjustment, modification, or upgrade; or

21 (B) an adjustment:

22 (i) due to an exacerbation in the condition of the
23 individual with a disability; or

24 (ii) to improve the fit of the assistive device.

25 Sec. 9. For purposes of this chapter, a "reasonable attempt to
26 repair" has occurred if, within one (1) year after the date of first
27 delivery of the assistive device, either of the following applies:

28 (1) The same nonconformity has been subject to repair two (2)
29 or more times by the manufacturer, assistive device lessor, or
30 any assistive device dealer authorized by the manufacturer to
31 repair the assistive device, and the nonconformity continues
32 to exist and interfere with the assistive device's operation.

33 (2) The assistive device is out of service because of
34 nonconformities, with no fungible loaner available, for a
35 cumulative total of at least thirty (30) business days (not
36 including any necessary time in shipment), due to repair by
37 the manufacturer, assistive device lessor, or any assistive
38 device dealer authorized by the manufacturer to repair the

1 assistive device. For purposes of this subdivision a loaner
 2 hearing aid is considered fungible with the consumer's
 3 hearing aid if the loaner hearing aid improves the consumer's
 4 hearing. This subdivision does not apply if the repairs could
 5 not be performed because of conditions beyond the control of
 6 the manufacturer, its agents, or authorized dealers, including
 7 war, invasion, strike, fire, flood, or other natural disasters.

8 **Sec. 10.** Notwithstanding any other law, in addition to any
 9 express warranty furnished by the manufacturer of an assistive
 10 device, the manufacturer is also considered to have warranted to
 11 any consumer purchasing or leasing the assistive device in Indiana
 12 both of the following:

13 (1) That for a period of one (1) year from the date of first
 14 delivery to the consumer the assistive device, when used as
 15 intended, will be free from any nonconformity.

16 (2) Any nonconformity will be repaired (including parts and
 17 labor) by the manufacturer or its agent, without charge to the
 18 consumer.

19 **Sec. 11.** If, after reasonable attempt to repair, a nonconformity
 20 is not repaired, the consumer must return the assistive device to
 21 the dealer and the manufacturer shall do either of the following:

22 (1) Do both of the following:

23 (A) Accept return of the nonconforming assistive device.

24 (B) Not later than fourteen (14) days after return of the
 25 assistive device, refund to the consumer or consumers:

26 (i) the full purchase price of the assistive device,
 27 excluding the cost of services associated with the device's
 28 initial purchase, together with reasonable collateral
 29 costs, less a reasonable allowance for use; or

30 (ii) if the device was leased, all lease payments made
 31 through the date of return together with a proportional
 32 share of any required deposit.

33 A refund of the amounts described in this clause to a
 34 consumer or consumers shall be made to the extent of each
 35 consumer's bearing the initial purchase or lease cost and
 36 bearing of any collateral costs.

37 (2) Accept return of the nonconforming assistive device and
 38 replace the nonconforming assistive device with one (1) of

1 comparable market value, function, and usefulness as
2 appropriate to the consumer within thirty (30) business days
3 of the return, not including, in the case of a hearing aid,
4 scheduling time for professional fitting and dispensing.

5 **Sec. 12. An assistive device returned due to a nonconformity**
6 **under this chapter by a consumer or an assistive device lessor in**
7 **Indiana or any other state may not be sold or leased again in**
8 **Indiana unless full disclosure of the reason for the return is made**
9 **to any prospective buyer or lessee.**

10 **Sec. 13. (a) The remedies afforded by this chapter are:**

- 11 (1) cumulative;
12 (2) not exclusive; and
13 (3) in addition to any other legal or equitable remedies
14 available to the consumer.

15 **(b) In addition to any other remedies available, a consumer who**
16 **suffers loss as a result of any violation of this chapter may:**

- 17 (1) bring an action to recover damages; or
18 (2) submit the matter to arbitration under IC 34-57-2.

19 **Sec. 14. (a) A manufacturer's exclusion or limitation of the**
20 **warranties or consumer remedies provided by this chapter is void.**

1 **(b) A purported waiver of rights to legal action or arbitration**
2 **by a consumer within an assistive device purchase agreement is**
3 **void."**

4 Delete pages 2 through 11.

 (Reference is to HB 1152 as reprinted February 9, 1999, and as
amended on motion of Representative Goeglein, adopted February 10,
1999.)

and when so amended that said bill do pass.

Committee Vote: Yeas 9, Nays 0.

Mills

Chairperson